IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

AUBREY BASS, by and through
his next friend, SHIRLEY HEARN, PLAINTIFF,

VERSUS CIVIL ACTION NO. 1:93CV215-S-D

CITY OF GRENADA, MISSISSIPPI, BEN SIMMONS, individually and in his official capacity as police chief of Grenada, Mississippi, DAVID McCULLUM, individually and in his official capacity as a police officer for the City of Grenada, Mississippi, JESSE GONZALES, individually and in his official capacity as a police officer for the City of Grenada, Mississippi, and CAPTAIN THOMAS DAY, individually and in his official capacity as a police captain for the City of Grenada, Mississippi, DEFENDANTS.

MEMORANDUM OPINION GRANTING
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

This cause of action is before the court on the motion of the defendants for summary judgment. The plaintiff brings this § 1983 action alleging violations of the Fourteenth Amendment substantive due process clause, the Eighth Amendment cruel and unusual punishment clause, and Fourth Amendment unreasonable seizure provision.

Facts

In the early evening of April 23, 1993, Joel Spearman was placed in a cell at the Grenada City Jail with the plaintiff and several other prisoners. Shortly after midnight, Chris Collins was added into the cell. Collins directed the plaintiff to get out of

bed in order for Collins to have it. When the plaintiff refused, Collins hit and kicked the plaintiff. Spearman joined into the assault. The plaintiff suffered bruises and contusions.

Although the plaintiff cried for help during the assault, which he asserts lasted approximately an hour, and other prisoners yelled for the jailer, no one of authority responded. Collins and Spearman told the plaintiff that they would hurt him again if he told the authorities. The plaintiff allegedly pounded on the cell door after his assailants had gone to sleep. He got no response from the police on guard and, interestingly, did not wake his assailants.

Around 6:00 a.m. the morning of April 24, Officer Gonzales opened the plaintiff's cell in order to allow the prisoners to get their showers. Immediately Gonzales noticed the plaintiff had a swollen lip and bruised eye. He asked the plaintiff what had happened; the plaintiff answered nothing. Gonzales escorted the plaintiff from the cell block to Officer McClellan (misspelled as "McCullum" in complaint). Only after McClellan persisted did the plaintiff explain that he had been assaulted by Collins and Spearman. McClellan helped the plaintiff fill out a criminal affidavit against Collins and Spearman. The plaintiff states that he requested medical attention and was refused. The defendants maintain that a police officer offered to take the plaintiff to the

hospital, but that he refused. He was given a bag of ice for the swelling.

At some time on April 24, the plaintiff was taken before Judge Vance. Although the plaintiff had not completed his sentence, he was released from jail. Hospital records indicate that the plaintiff saw a doctor in the afternoon of April 26, 1993. The plaintiff maintains that it was the afternoon of the 25th. No broken bones were indicated by the plaintiff's x-rays. He was given a prescription for some medication. The plaintiff states that he remained in his house for about two weeks, until the swelling decreased, and that he experienced headaches for about a month.

The jail is equipped with audio equipment which enables the jailer to monitor the cell block. The audio monitoring system would supposedly allow the dispatcher to hear any unusual or loud noises. The defendants maintain that no unusual sounds were heard by any officers on duty the night of April 23 or the early morning of April 24. Additionally, the officer on duty checks the cellblock about every hour. The log sheet indicates that the cells were not checked between 12:15 a.m. and 4:00 a.m. on the early morning of April 24, 1993.

Summary Judgment Standard

On a motion for summary judgment, the court must ascertain whether there is a genuine issue of material fact. Fed. R. Civ. P.

56(c). This requires the court to evaluate "whether there is the need for a trial--whether, in other words, there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party." Anderson v. Liberty Lobby, Inc. 477 U.S. 242, 250 (1986). The United States Supreme Court has stated that "this standard mirrors the standard for a directed verdict...which is that the trial judge must direct a verdict if, under the governing law, there can be but one reasonable conclusion as to the verdict. If reasonable minds could differ as to the import of the evidence, however, a verdict should not be directed." Anderson, 477 U.S. at 250-51 (citation omitted). Further, the Court has noted that the "genuine issue" summary judgment standard is very similar to the "reasonable jury" directed verdict standard, the primary difference between the two being procedural, not substantive. Id. at 251. "In essence...the inquiry under each is the same: whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Id. at 251-52. "The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff. The judge's inquiry, therefore, unavoidably asks whether reasonable jurors could find by a preponderance of the evidence that the plaintiff is entitled to a

verdict - `whether there is [evidence] upon which a jury can properly proceed to find a verdict for the party producing it, upon whom the onus of proof is imposed.'" Id. at 252 (citation omitted). However, "[c]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict. The evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor." Id. at 255.

Discussion

I. Deliberate Indifference to Serious Medical Needs

The elements of a § 1983 cause of action are: (1) a deprivation of rights secured by the constitution, (2) by a person acting under color of state law. "A § 1983 claim may lie when a prisoner's obviously serious medical needs are met with 'deliberate indifference' by officials." Evans v. Marlin, 986 F.2d 104, 107 (5th Cir. 1993) (citing Estelle v. Gamble, 429 U.S. 97, 105 (1976)). "[T]he district court should be mindful that the essential test is one of medical necessity and not one simply of desirability." Woodall v. Foti, 648 F.2d 268, 272 (5th Cir. 1981). "[T]he due process clause requires treatment only for serious wounds--those that may be life threatening or pose a risk of needless pain or lingering disability if not treated at once." Davis v. Jones, 936 F.2d 971, 972 (7th Cir. 1991).

In Davis v. Jones an inmate suffered a scraped elbow and a one-inch cut on his temple. The court concluded that an "objectively reasonable officer would not have thought a shallow one-inch cut 'serious'". Id. 936 F.2d at 973. In Martin v. Gentile, 849 F.2d 863, 871 (4th Cir. 1988), the appellate court held that it was not clearly erroneous for the district court to find no serious medical needs for an individual with a cut over one eye, glass embedded in his palm and bruises on his shoulders and elbows. The Fourth Circuit concluded "that the delay in taking Martin to the hospital, even if deliberate, did not amount to a constitutional violation under the Estelle standard." In Williams-El v. Johnson, 872 F.2d 224, 231 (8th Cir. 1989), the Eighth Circuit held that a split lip and a minor bruise to the back were not serious conditions, and thus, the failure to provide medical assistance was not a violation of the detainee's constitutional rights.

The injuries sustained by the plaintiff were unfortunate, but not serious. The police officers saw the plaintiff's swollen lip, blackened eye, and bruises on his head. None of the injuries were bleeding. When the plaintiff was released, even he did not immediately seek medical attention.[1] The report from the eventual

[1] The plaintiff argues that since he was released before he had served his entire sentence, the defendants did not want to provide medical treatment to him. The court has held that the plaintiff did not receive injuries which rose to the necessary level which required the defendants to provide the plaintiff

doctor's examination indicated that plaintiff's injuries were only minor. The x-rays showed that nothing was broken. The plaintiff argues that it is a disputed fact whether the injuries sustained were serious. The plaintiff has not produced a scintilla of evidence that his bruises and contusions were serious. No reasonable jury could conclude that they were. Accordingly, the plaintiff has failed to have proven a violation of the Eighth Amendment.

In the pretrial order, the plaintiff alleges a violation of the Fourteenth Amendment substantive due process rights, but provides the court with no insight as to this claim in his memorandum in opposition to summary judgment. "[T]he protections of the Due Process Clause, whether procedural or substantive, are just not triggered by lack of due care by prison officials." Davidson v. Cannon, 474 U.S. 344, 348 (1986). Clearly, the facts alleged by the plaintiff do not exceed a claim of negligence. The plaintiff does not have a claim under the Fourteenth Amendment.

II. Failure to Train

"Under certain circumstances, however, a municipality may incur § 1983 liability for its employees' acts when a municipal policy of hiring or training causes those acts." Benavides v.

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medical assistance "[A]s long as the governmental entity ensures that the medical care needed is in fact provided, the Constitution does not dictate how the cost of that care should be allocated ...." Revere v. Massachusetts General Hospital, 463 U.S. 239, 245 (1983). The court notes that evidence indicates that Collins and Spearman were fined the costs associated with plaintiff's medical care.

County of Wilson, 955 F.2d 968, 972 (5th Cir. 1992). For the plaintiff's failure to train claim to survive, he must raise a genuine issue of fact as to the existence of the following three elements:

> 1) the training procedure of the municipality's policymaker was inadequate; 2) the municipality's policymaker was deliberately indifferent in adopting the training policy; and 3) the inadequate training policy directly caused the plaintiff to suffer a constitutional violation.

See Benavides v. County of Wilson, 955 F.2d at 973; Hinshaw v. Doffer, 785 F.2d 1260, 1263 (5th Cir. 1986).

Allegations of inadequate training must be supported by evidence of a policy or custom which is the "moving force" of the constitutional violation. Monell v. Department of Social Servs., 436 U.S. 658, 694 (1978). An isolated incident is insufficient to show that a policy or custom exists. Palmer v. San Antonio, 810 F.2d 514, 516 (5th Cir. 1987). The plaintiff has failed to present any evidence that the medical training of the policemen of the City of Grenada was inadequate, much less somehow attributable to some constitutional violation. The mere statement that the policemen had only received certification by the police academy does nothing to further the plaintiff's claim of insufficient training. "[C]onclusory allegations of '... grossly inadequate training' do not make out a case of a deliberately indifferent policy." Rodriguez v. Avita, 871 F.2d 552, 555 (5th Cir. 1989).

A "city cannot be held liable under § 1983 unless [plaintiff] prove[s] the existence of an unconstitutional municipal policy." St. Louis v. Praprotnik, 485 U.S. 112 (1988).

> The Court [in Monell,] intended there be a legal perimeter for city liability, which was not to include responsibility for the edicts or acts of its employees, whatever their rank, unless in accord with city policy. Liability must rest on official policy, meaning the city government's policy and not the policy of an individual official. The policy is that of the city, however, where it is made by an official under authority to do so given by the governing authority. Hence, culpable policy is attributable to the governing body of the city where the policy was made by an official to whom the governing body had given policy-making authority.

Bennett v. Slidell, 728 F.2d 762, 769 (5th Cir. 1984). "In a § 1983 action, a municipality may not be held strictly liable for the acts of its non-policy-making employee under a respondeat superior theory." Benavides v. County of Wilson, 955 F.2d at 972 (citing Oklahoma City v. Tuttle, 471 U.S. 808, 817-18 (1985)).

Only Ben Simmons, as chief of police, could be considered a policymaker for the City of Grenada. The only policies set by Simmons which have been brought to the court's attention are the requirement to check the cellblock hourly, monitor the cellblock over the audio system, and provide medical care when necessary. "Failure to follow procedural guidelines standing alone, does not implicate constitutional liability." Evans v. Marlin, 986 F.2d at 108 n.6 (citing Gagne v. City of Galveston, 805 F.2d 558, 559-60 (5th Cir. 1986) (qualified immunity not lost merely because "conduct violates some statutory or administrative provision."

(quoting Davis v. Scherer, 468 U.S. 183 (1984)). The negligent failure to have followed these policies may have contributed to the plaintiff's alleged constitutional violations, but that alone does not allow him to prevail. Additionally, the plaintiff has not articulated a policy of the City of Grenada which is proximately connected to the injuries suffered by the plaintiff.

Under section 1983, supervisory officials are not liable for the actions of subordinates on any theory of vicarious liability. See Pembaur v. City of Cincinnati, 475 U.S. 469 (1986). "[A] supervisor may be held liable if there exists either (1) his personal involvement in the constitutional violation, or (2) a sufficient causal connection between the supervisor's wrongful conduct and the constitutional violation." Thompkins v. Belt, 828 F.2d 298, 304 (5th Cir. 1987) (citing Harvey v. Andrist, 754 F.2d 569, 572 (5th Cir. 1985). The plaintiff does not dispute that Chief Simmons had no personal involvement in the incidents of April 24, 1993. As to the second avenue of potential liability, Chief Simmons can be liable if he "implement[ed] a policy so deficient that the policy 'itself is a repudiation of constitutional rights' and is 'the moving force of the constitutional violation.'" Thompkins, 828 F.2d at 304 (quoting Grandstaff v. City of Borger, 767 F.2d 161, 169, 170 (5th Cir. 1985). As discussed above in reference to Chief Simmons' official capacity, the plaintiff has

not suffered a constitutional violation, nor has he shown any proximate relationship between the policies and his injuries.

III. Failure to Protect

"The Constitution 'does not mandate comfortable prisons,' but neither does it permit inhumane ones, and it is now settled that 'the treatment a prisoner receives in prison and the conditions under which he is confined are subject to scrutiny under the Eighth Amendment.'" Farmer v. Brennan, 114 S.Ct. 1970, 1976, 128 L.Ed.2d 811, 62 L.W. 4446, 4448 (June 6, 1994) (quoting respectively Rhodes v. Chapman, 452 U.S. 337, 349 (1981); Helling v. McKinney, 509 U.S. ___ (1993)). "The Eighth Amendment affords prisoners protection against injury at the hands of other inmates." Johnston v. Lucas, 786 F.2d 1254, 1259 (5th Cir. 1986) (citing Smith v. Wade, 461 U.S. 30 (1983)).

> It is not, however, every injury suffered by one prisoner at the hands of another that translates into constitutional liability for prison officials responsible for the victim's safety. Our cases have held that a prison official violates the Eighth Amendment only when two requirements are met. First, the deprivation alleged must be, objectively, sufficiently serious; a prison official's act or omission must result in the denial of the minimal civilized measure of life's necessities based on a failure to prevent harm, the inmate must show that he is incarcerated under conditions posing a substantial risk of serious harm.
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> The second requirement follows from the principle that only the unnecessary and wanton infliction of pain implicates the Eighth Amendment. To violate the Cruel and Unusual Punishments Clause, a prison official must have a sufficiently culpable state of mind. In prison-conditions cases that state of mind is one of deliberate indifference to inmate health or safety....

Farmer v. Brennan, 114 S.Ct. at 1977 (internal citations omitted). The plaintiff was incarcerated in a cell with individuals who were not known by the defendants to pose a substantial risk of serious harm to the plaintiff. In his deposition, the plaintiff stated that he knew both Collins and Spearman and had never had a confrontation with either. Some of the defendants stated in their deposition that they were aware that other incidents of inmate assaults had occurred, but it appears that the previous assaults were distant and not common. The plaintiff has not presented any evidence that the Grenada City Jail had an persistent problem with fights among the inmates. See Alberti v. Klevenhagen, 790 F.2d 1220, 1224 (5th Cir. 1986) ("In Jones [v. Diamond, 636 F.2d at 1373], we found confinement in a prison 'where terror reigns' to be violative of the Eighth Amendment. 'A prisoner has a right to be protected from the constant threat of violence and from sexual assault.' Id.")

The United States Supreme Court sought to define deliberate indifference in Farmer v. Brennan.

> Under the test we adopt today, an Eighth Amendment claimant need not show that a prison official acted or failed to act believing that harm actually would befall an inmate; it is enough that the official acted or failed to act despite his knowledge of a substantial risk of serious harm.
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> Because, however, prison officials who lacked knowledge of a risk cannot be said to have inflicted punishment, it remains open to the officials to prove that they were unaware even of an obvious risk to inmate health or safety.

* * * *

> A prison official's duty under the Eighth Amendment is to ensure "reasonable safety," a standard that incorporates due regard for prison officials' "unenviable task of keeping dangerous men in safe custody under humane conditions." Whether one puts it in terms of duty or deliberate indifference, prison officials who act reasonably cannot be found liable under the Cruel and Unusual Punishment Clause.

Id. 114 S.Ct. at 1981-82 (internal citations omitted). The key is whether the officials knew or reasonably should have known of a substantial risk of serious harm, and unreasonably failed to alleviate the risk. Again, some of defendants were aware of a few prior incidents of prisoners assaulting one another, but it was not pervasive. Furthermore, there is no indication the defendants were aware of a substantial risk of serious harm to the plaintiff in particular. No evidence has been provided which indicates any level of culpability by the defendants, certainly not to the level of deliberate indifference. Accepting the plaintiff's version as true, at best the defendants might have been negligent for not having heard the assault upon the plaintiff. But negligent action does not support liability under § 1983. Daniels v. Williams, 474 U.S. 327, 338 (1986); Davidson v. Cannon, 474 U.S. at 347.

Since the court has found no constitutional violations, it is not necessary to discuss whether the claims against the defendant police officers are barred by qualified immunity. Accordingly, the defendants' motion for summary judgment is well taken. An order in accordance with this memorandum opinion shall be issued.

This the _____ day of February, 1995.

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CHIEF JUDGE